

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

In Re:

AREDIA and ZOMETA PRODUCTS  
LIABILITY LITIGATION  
(MDL No. 1760)

No. 3:06-MDL-01760  
Judge Campbell/Brown

This Document Relates to:  
Case No. 3:08-cv-01178

To: The Honorable Todd J. Campbell

**Report and Recommendation**

This matter comes before the Magistrate Judge on Defendant's Motion to Dismiss pursuant to F.R.C.P. 4(M). (DE 2123). Defendant asserts that it has not been served with this Plaintiff's complaint. For the reasons stated below, the Magistrate Judge **recommends** that this motion be **DENIED**.

Plaintiff has filed a response stating that Plaintiff's counsel was informed prior to the filing of the Complaint on October 30, 2008, that service was waived. (DE 2147). Plaintiff further responds that Plaintiff served his Designation of Counsel on January 8, 2009, and Plaintiff's completed Fact Sheet and Authorizations on January 14, 2009. (DE 2147). Plaintiff further argues that on March 31, 2009, the Court issued a summons for the Defendant, which was received by the Defendant via mail on April 6, 2009.

Given the circumstances outlined by this Plaintiff, it appears there is good cause for the failure to serve within the allotted time. F.R.C.P 4(M). Further, it appears that the Defendant has now been served and that the Defendant was provided with a complete Plaintiff's Fact Sheet in a very prompt manner.

For the reasons stated above, the Magistrate Judge recommends that Defendant's Motion to Dismiss be **DENIED**.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has ten (10) days from receipt of this Report and Recommendation in which to file any written objection to it with the District Court. Any party opposing said objections shall have ten (10) days from receipt of any objections filed in which to file any responses to said objections. Failure to file specific objections within ten (10) days of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. *Thomas v. Arn*, 474 U.S. 140 (1985); *Cowherd v. Million*, 380 F.3d 909, 912 (6<sup>th</sup> Cir. 2004 (en banc)).

  
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/s/ Joe B. Brown

JOE B. BROWN

UNITED STATES MAGISTRATE JUDGE